

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## **Advice Memorandum**

DATE: September 27, 2001

TO : Curtis A. Wells, Regional Director  
Michael B. Frost, Regional Attorney  
Rodney Johnson, Assistant to Regional Director  
Region 15

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Offshore Mariners United 712-5042  
(Trico Marine Operators, Inc.) 712-5042-3300  
Case 15-CC-832 712-5042-5500  
712-5042-6701-5025  
712-5042-6742

This Section 8(b)(4)(B) case was submitted for advice as to whether the Offshore Mariners Union ("OMU") should be held responsible for a Norwegian union's alleged secondary threat to boycott neutral employers located in Norway.

### **FACTS**

OMU is a project of five American maritime unions: American Maritime Officers ("AMO"), International Organization of Masters, Mates and Pilots ("MM & P"), Marine Engineers' Beneficial Association ("MEBA"), National Maritime Union ("NMU"), and Seafarers' International Union ("SIU"). OMU has been engaged in a campaign to organize mariners in the Gulf of Mexico. The International Transport Workers Federation ("ITF") is a "global organization supporting transport workers mobilizing solidarity." The ITF lists as members each of the affiliate unions that make up OMU but does not list OMU as a member. The ITF also lists as members numerous foreign unions including the Norwegian Oil, Petrochemical & Energy Federation ("NOPEF").

The Employer, Trico, operates ships that service offshore oil rigs and platforms. Trico has a Louisiana based operation, Trico Marine Operators, Inc., and a Norwegian based operation, Trico Supply ASA. Trico Marine's mariners are not unionized; Trico Supply's Norwegian mariners are members of Norwegian unions.

In the fall of 2000, OMU began a campaign to pressure Trico's customers and suppliers. OMU advised a number of these entities that their business relationship with Trico could be interpreted as an endorsement of its "misguided policies and heavy-handed methods" and that by choosing Trico for work, they "appear to be endorsing Trico's anti-

union policies and supporting Trico's anti-workers practices."<sup>1</sup>

Between June 1 and 6, 2001,<sup>2</sup> a delegation of international union representatives visited Louisiana at OMU's invitation.<sup>3</sup> Among the invited foreign unions were ITF and NOPEF. On July 11, NOPEF published a "Notice of Boycott" threatening an August 16 boycott of any work related to Trico in the North Sea. NOPEF's July 11 Notice of Boycott states, in pertinent part:

NOPEF's members in Statoil, Norsk Hydro, Phillips, Amoco, BP, CCB, Aker Base Dusavik, Fjordbase, Vestbase, Forsyningsbase Helgeland in Sandnessjoen, Mongstad Base and Polarbase will be called on not to execute work which has anything to do with Trico Marine Service, its subsidiary and companies where Trico Marine Service USA has beneficial ownership. This will possibly take the form of a sympathetic action.<sup>4</sup>

On December 9, 2000, OMU Field Director Eckstein and ITF Offshore Taskforce Chairman McVicker had been guests on a radio show. Referring to prior visits to Louisiana by other delegations of international unions in April and December, McVicker stated the delegates "expressed solidarity with OMU," demanded that Trico Marine recognize the OMU and "reinstate all of the workers that have been sacked for trade union activities." McVicker also stated that ITF was calling upon all of its affiliates worldwide to "take whatever action they are able to in support to OMU."

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<sup>1</sup> The Employer does not allege that this "corporate campaign" by OMU was unlawful.

<sup>2</sup> All remaining dates are in 2001 unless otherwise noted.

<sup>3</sup> A June 7 OMU press release, relating the experiences of this international delegation on its visit to Louisiana, states, "The delegation, in Louisiana at the invitation of the Offshore Mariners United (OMU) to observe first hand the conditions of mariners working in the Gulf of Mexico oil patch, was made up of representatives from ITF affiliated unions which have collective bargaining agreements with Trico in Norway and the United Kingdom, other ITF representatives, and union employees of Trico customers BP/AMCO, Statoil, and Norsk Hydro."

<sup>4</sup> The threatened August 16 boycott has not yet occurred.

On February 2, a representative of the ITF and individual representatives of the five unions that make up the OMU had signed a letter to the Department of State. The letter alleged that Trico had committed violations of OECD (Organization of Economic Cooperation and Development) guidelines and requested that the State Department meet with representatives from OMU, the ITF and the AFL-CIO.

ITF asserts that its affiliates are autonomous and "have no relationship in the nature of agency or joint venture" with ITF, nor does ITF have agency or joint venture relationships with any other organization. NOPEF asserts that it independently decided to start a boycott action against Trico Marine.<sup>5</sup> Finally, OMU asserts that it is not in a joint venture with NOPEF to boycott Trico Supply's customers and suppliers in Norway, and that NOPEF is not otherwise OMU's agent for that endeavor.

### **ACTION**

We conclude, in agreement with the Region, that this charge should be dismissed, absent withdrawal, because there is insufficient evidence of a joint venture or agency relationship between OMU and NOPEF.<sup>6</sup>

The Board applies "the ordinary law of agency" in determining liability of a union for unlawful conduct of others.<sup>7</sup> In Coastal Stevedoring,<sup>8</sup> the ILA wrote a letter to Japanese unions requesting their assistance in preventing non-union stevedoring companies from loading Florida citrus

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<sup>5</sup> NOPEF avers that when it "informed our friends in the USA about this, they were very surprised." On or about August 20, NOPEF posted on its website the substance of a letter dated August 20 from AFL-CIO president Sweeney, in which he allegedly expresses appreciation for the boycott threat that NOPEF decided was "appropriate" support for workers worldwide, and "handled this in an exemplary manner" of international solidarity.

<sup>6</sup> Moreover, as discussed below, there is also a substantial question whether that NOPEF's threatened boycott in Norway violated Section 8(b)(4)(B) absent evidence that the Norwegian neutrals were engaged in interstate commerce.

<sup>7</sup> International Longshoremen's and Warehousemen's Union, C.I.O. (Sunset Line and Twine Co.), 79 NLRB 1487, 1507 (1948).

<sup>8</sup> International Longshoremen's Association (Coastal Stevedoring), 313 NLRB 412 (1993).

fruit on ships bound for Japan. The Japanese unions responded to the ILA's request by threatening not to unload any ships which had been loaded in the United States by non union stevedores. As a result of those threats, the Japanese shipping companies diverted their ships from the non-union port of Ft. Pierce to the union port of Tampa where the ships were loaded by ILA represented longshoremen. The ILA later thanked the Japanese unions, credited the Japanese unions with the diversion of the ships to union ports, and requested the Japanese unions' continued support in the future.

The Board found that the ILA was liable for the secondary threat of the Japanese union based upon two grounds of agency. First, since the ILA had affirmatively requested the Japanese unions' assistance in effecting a boycott, the Board found agency based upon actual authority.<sup>9</sup> Second, since the ILA subsequently thanked the Japanese unions and requested their continuing support, the Board found agency based upon ratification. The Board found no compelling significance in the fact that the secondary conduct was committed by foreign unions outside of the United States. The Board found that it had jurisdiction because significant conduct in furtherance of the secondary boycott occurred within the United States, and the Board's order would run against a domestic labor organization subject to the Act.<sup>10</sup>

The ILA appealed the Board's decision to the D.C. Circuit which held that the Japanese unions were "completely independent entities" and not agents of the ILA, remanding the case to the Board.<sup>11</sup> On remand, the Board found that it was precluded from finding agency under any theory of law.<sup>12</sup> The Board then proceeded to consider whether the ILA was liable under a theory of joint venture. The Board noted that a joint venture between unions requires showing that the unions "participated in a planned course of action, jointly conceived, coordinated and adopted to attain a mutually agreed upon object."<sup>13</sup> The Board found no joint

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<sup>9</sup> The Board noted that the ILA had expressly requested the Japanese unions' support "in denying the unloading and landing of these products in your country. . . ."

<sup>10</sup> 313 NLRB at 417.

<sup>11</sup> 56 F.3d 205 (1995).

<sup>12</sup> 323 NLRB 1029 (1997).

<sup>13</sup> Id. at 1031, citing Sheet Metal Workers Local 19 (Declard Associates), 316 NLRB 426, 434 (1995).

planning, coordination or adoption of a plan. The Board then held that a mere request for assistance, and an agreement to provide it, does not establish joint venture.

We conclude, in agreement with the Region, that Coastal Stevedoring is distinguishable as to agency and that NOPEF was not an authorized agent of OMU nor engaged with it in a joint venture. The ILA in Coastal Stevedoring affirmatively requested boycott assistance from the Japanese unions. There is no evidence that the OMU made any such request or otherwise actually authorized NOPEF to boycott Trico Supply. There also is no evidence to show OMU's participation with NOPEF in any planning, coordinating or adopting the Notice of Boycott.<sup>14</sup> Absent such evidence, there is no basis for a finding of a joint venture.<sup>15</sup>

We also reject the argument that NOPEF was the implied agent of OMU because OMU did not affirmatively disavow NOPEF's threatened boycott. The Board will find a union liable for picket line misconduct where the union witnesses or is otherwise aware of the misconduct yet fails to effectively disavow it or bring it to a halt.<sup>16</sup> Effective disavowal of picket line violence requires more than the mere repetition of directions that are clearly being ignored, and rather must impose on the perpetrators such

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<sup>14</sup> See General Teamsters Local 126 (Ready Mixed Concrete, Inc.), 200 NLRB 253, 272 (1972); Sheet Metal Workers Local 19 (Declard Associates), 316 NLRB at 434.

<sup>15</sup> OMU's apparent joint venture with ITF in writing a letter to the Department of State regarding Trico's alleged noncompliance with international guidelines is a wholly insufficient basis to find a joint venture with NOPEF regarding separate conduct, i.e. the threatened boycott. Moreover, while the Respondent union in Coastal Stevedoring thanked the Japanese unions for the cooperation it had requested, here NOPEF was thanked not by OMU (the Charged Party), but by the AFL-CIO which is not, without more, an agent of its constituent unions. See Carbon Fuel Co. v. United Mine Workers of America, 444 U.S. 212, 216-18 (1979); Coronado Coal Co. v. Mine Workers, 268 U.S. 295, 304 (1925).

<sup>16</sup> See, e.g., Amalgamated Meatcutters Local 222 (Iowa Beef Processors, Inc.), 233 NLRB 839, 850-51 (1971); Dover Corp., Norris Div., 211 NLRB 955, 956-7 (1974); Teamsters Local 783 (Coca-Cola Bottling), 160 NLRB 1776, 1779 (1966).

restrictions or penalties as denials of strike benefits.<sup>17</sup> We find these cases clearly distinguishable because there the unions had control over the alleged agents and yet refused or failed to assert that control. Here, the OMU had no control whatsoever over NOPEF or the ITF.

The Board has found that two unions violated Section 8(b)(4)(D) where employees they represented engaged in a "sick out" after the unions had claimed the work in dispute. In that case, the unions apparently knew about but failed to disavow the employees' conduct nor attempted to get them back to work when they engaged in the "sick out" in apparent support of the unions' 8(b)(4)(D) object.<sup>18</sup> Similarly, the Board has found a union liable for Section 8(b)(4)(B) picketing where the picketing individuals were using the union's own signs and the union failed to disavow that conduct.<sup>19</sup> The Board found liability based upon apparent authority because use of the union's own picket signs, along with notification to the union of this conduct, would create the reasonable belief that the picketing individuals had been authorized to act on behalf of the union where the union "took no steps to effectively disassociate itself from the picketing." The Board also found liability based on ratification based solely on the notice to the union of the picketing with its own signs. 291 NLRB at 83-84. These cases, like those involving picket line misconduct, are also clearly distinguishable because there the unions also had control over either the alleged agents or its picket signs, yet refused or failed to assert that control. In contrast, the OMU had no control whatsoever over NOPEF or the ITF. Thus the above cases do not hold, and we would not argue, that a union's mere failure to disavow an alleged unlawful statement issued by a wholly independent entity thereby confers liability upon the union.

Finally, even assuming that there was some evidentiary basis to find OMU liable for NOPEF's boycott threat, we note that there is a substantial question whether NOPEF's boycott threat violated Section 8(b)(4)(i)(ii)(B) which prohibits unions from pursuing a secondary object by, in pertinent part, inducing a work stoppage by an individual employed by, or coercing, "any person engaged in commerce or in an

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<sup>17</sup> Teamsters Local 783 (Coca-Cola Bottling), above; UMW, Dist 50 (Tungsten Mining Co.), 106 NLRB 903, 908, note 5 (1953).

<sup>18</sup> Laborers Local 616 (Bruce and Merrilees), 302 NLRB 841, 843 (1991).

<sup>19</sup> SEIU Local 87 (West Bay Maintenance), 291 NLRB 82 (1988).

industry affecting commerce." In Coastal Stevedoring, the Board held that the Japanese unions' "threats to refuse to unload fruit loaded by non-union labor in Florida ... threatened a secondary boycott of the kind prohibited by the Act" because "the importers, exporters, and shipping companies contacted by the Japanese unions ... were persons engaged in commerce or an industry affecting commerce ...."<sup>20</sup> In sharp contrast, there is no evidence here that NOPEF's threats were directed against persons "engaged in commerce or in an industry affecting commerce." None of the allegedly unlawful conduct was initiated in the United States by OMU, and there is no evidence that the Norwegian unions and alleged neutrals are engaged in trade with companies located in the United States, unlike the citrus trade at issue in Coastal Stevedoring, above. The only connection between any alleged neutral and a company located in the United States is that Trico Supply ASA is a wholly-owned subsidiary of Trico, a U.S. corporation. The Charging Party has supplied no evidence that their relationship contains any indicia of a single employer or integrated enterprise sufficient to place the subsidiary in commerce, or any other argument about the nature of the business relations of any company subject to the boycott threat supporting a finding that they affect commerce within the meaning of Section 8(b)(4). Absent such evidence, NOPEF's boycott threat may well be lawful as not affecting interstate commerce, even if OMU were liable for it.<sup>21</sup>

In sum, the Region should dismiss these charges, absent withdrawal, because there is insufficient evidence that OMU is liable for NOPEF's boycott threat under any theory of agency or as a joint venturer.

B.J.K.

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<sup>20</sup> 313 NLRB at 417. See also ILA v. Allied International, Inc., 456 U.S. 212, 221-22 (1982) (America union boycott of American stevedores handling Russian goods on American ships in American ports to protest Russian invasion of Afghanistan clearly "in commerce" under Section 8(b)(4), in part because it did not seek to affect dispute between foreign seamen and foreign shipowners).

<sup>21</sup> [FOIA Exemption 5